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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,048	07/23/2003	Ben Saidi	020728	1441

23696   7590   09/17/2008
QUALCOMM INCORPORATED
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EXAMINER
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ART UNIT	PAPER NUMBER
2151	

NOTIFICATION DATE	DELIVERY MODE
09/17/2008	ELECTRONIC

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/626,048
Filing Date: July 23, 2003
Appellant(s): SAIDI ET AL.

_____

Raphael Freiwirth, Registration Number 52,918
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 15th, 2008 appealing from the Office

action mailed on January 28th, 2008.

(1) Real Party in Interest

The real party in interest in this appeal is Qualcomm, Incorporated, 5775

Morehouse Drive, San Diego, California, 92121.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial

proceedings which will directly affect or be directly affected by or have a bearing on the

Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection

contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is

correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,785,262   Yao et al.   08-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless —
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 1-25, 27, 29, 31 and 33-36 are rejected under 35 U.S.C. 102(e) as being

anticipated by Yao et al. U.S. Patent Number 6,785,262 B1 (hereinafter Yao).

As per claim 1, Yao discloses requesting a group call at a first

communication device (see column 2, lines 58-60; column 7, line 40 – column 8,

line 29); receiving a stream of media from the first communication device wherein

said stream of media comprises of one or more silence frames; (see column 3,

lines 20-21; column 8, line 63 – column 9, line 15 and column 12, lines 14- 30);

and automatically suppressing the one or more silence frames from the received

stream of media (see column 3, lines 53-58 ;column 8, line 63 – column 9, line 15

and column 12, lines 14- 30).

As per claim 2, Yao discloses said suppressing includes suppressing an

initial silence frame situated before a first media frame (see column 4, lines 8-

40).

As per claim 3, Yao discloses said suppressing includes suppressing all initial silence frames situated before a first media frame (see column 4, lines 8-40).

As per claim 4, Yao discloses said suppressing includes suppressing a silence frame situated between two successive media frames (see column 4, lines 8-40).

As per claim 5, Yao discloses said suppressing a silence frame includes suppressing the silence frame that is in access of a predetermined number of silence frames situated between the two successive media frames (see column 4, lines 8-40).

As per claim 6, Yao discloses said suppressing the silence frame includes suppressing the silence frame that follows a first predetermined number of silence frame following a first media frame and precedes a second predetermined number of silence frame proceeding a media frame subsequent to the first media frame (see column 4, lines 15-25).

As per claim 7, Yao discloses requesting a group call at a first communication device (see column 2, lines 58-60; column 7, line 40 – column 8, line 29); receiving a stream of media from the first communication device wherein said stream of media comprises of one or more silence frames; (see column 3, lines 20-21; column 8, line 63 – column 9, line 15 and column 12, lines 14- 30); and automatically suppressing the one or more silence frames from the received

stream of media (see column 3, lines 53-58 ;column 8, line 63 – column 9, line 15 and column 12, lines 14- 30).

As per claims 8-12, claims 8-12 are computer readable medium of method claims 2-6, respectively. They do not teach or further define the limitations recited in claim 2-6, respectively. Therefore, claims 8-12 are rejected for the same reasons set forth in claim 2-6, supra.

As per claims 13-18, claims 13-18 are an apparatus claim of method claims 1-6, respectively. They do not teach or further define the limitations recited in claim 1-6, respectively. Therefore, claims 13-18 are rejected for the same reasons set forth in claim 1-6, supra.

As per claim 19, Yao discloses a receiver capable of receiving information (see column 3, lines 20-21); a transmitter capable of transmitting information (see column 3, lines 3-4); and a processor (see column 3, lines 12-15) for automatically suppressing silence frames in a stream of media, the method comprising: receiving a stream of media from a user (see column 3, lines 20-21); and the silence frames from the received stream of media is suppressed (see column 3, lines 53-58).

As per claims 20-24, claims 20-24 are an apparatus claim of method claims 2-6, respectively. They do not teach or further define the limitations recited in claim 2-6, respectively. Therefore, claims 20-24 are rejected for the same reasons set forth in claim 2-6, supra

As per claim 25, Yao discloses buffering and then forwarding the suppressed stream of media (see column 12, lines 14 – 29, buffering taking place at receiver buffer before transmitting the frames based upon receiver buffer underflow or overflow conditions).

As per claims 27 and 29, claims 27 and 29 do not teach or further define over the limitation as recited in claim 25. Therefore, claims 27 and 29 are rejected under same scopes as discussed in claim 25, supra.

As per claim 33, Yao discloses determining whether the stream of media includes one or more silence frame between successive media frames of the stream of media, each media frame including data; and wherein the one or more silence frames are suppressed based on the determining step (see column 10, line 55 - column 12, line 50).

As per claims 34-36, they do not teach or further define over the limitation as recited in claim 33. Therefore, claim 34-36 are rejected under same scope as discussed in claim 33, supra.

(10) Response to Argument

As per arguments filed, appellant's arguments have been fully considered but they are not persuasive. Appellants continue to argue in substance that:

a.   Yao fails to disclose or suggest automatically suppressing silence frames because Yao teaches frame-dropping at a fixed, predetermined rate without evaluating whether a frame is silence frame.

In response to appellant argument a), examiner would like to point out that Yao reference is directed to a method for "voice latency reduction in voice-over-data wireless communication system" similar to a method for "reducing media transmission latency" as discussed in instant application and also admitted by the appellant.

"Yao is directed to a method and apparatus for voice latency reduction in a voice-over- data wireless communication system.2 With respect to Figure 8 of Yao, Yao teaches (i) analyzing communication system latency, (ii) determining whether the latency, as indicated by a frame error rate (FER), is above a threshold (804), and (iii) dropping frames at <u>different fixed rates."</u>

However, appellant continues to argue that Yao is directed to frame-dropping at a fixed, predetermined rate without evaluating whether a frame is silence frame. Examiner respectfully disagrees with appellant assertions. It appears that appellant is arguing based on his own assertions as Yao clearly discloses evaluating latency and clearly discloses that increased in latency happens due to overflows and high disruption caused by silence frame and poor channel conditions (see column 12, lines 15-29).

"At the receiver, during poor channel conditions, receiver buffer first underflows due to the lack of error-free frames received, then overflows when the channel conditions improve. When the receive buffer

underflows, silence frames, otherwise known as erasure frames, are provided to a voice decoder in order to minimize the disruption in voice quality to a user. If the receive buffer overflows, or becomes relatively large, latency is increased."
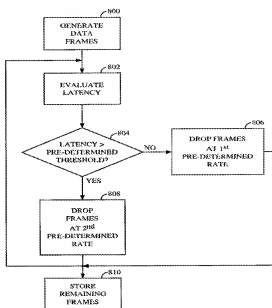
FIG. 8

Therefore, once the latency is above predetermined threshold, Yao determines all conditions related to latency threshold and drop data at predetermined rate (see column 16, line 14 – column 17, line 41). As it is clear from Yao that silence frame was provided to a voice decoder in order to minimize the disruption, examiner considers silence frame embodied in "data frames

[silence frame provided to voice encoder] generated by voice encoder are then dropped at the first predetermined rate"   See column 17, lines 7-16 below.

"In step 804, the communication system latency is evaluated in comparison to a first predetermined threshold. In transmitter 400, if the communication channel quality is less than a first predetermined threshold, step 806 is performed in which data frames from voice encoder 406 are dropped at a first predetermined rate. In the exemplary embodiment, the first predetermined threshold is a number of NAKs received over a predetermined period of time, or the size of queue 408. Data frames generated by voice encoder 406 are then dropped at the first predetermined rate, in the exemplary embodiment, between 1 and 10 percent."

Therefore, Yao does discloses automatically suppressing silence frames and in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "without evaluating a frame is silence frame") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

b.   The examiner's position that suppressing silence frames can be achieved without dropping silence frame is not reasonable and rejection is improper even based on the examiner's own assertions.

In response to appellant argument b), the examiner has not made a rejection based on the reason as discussed in response to the arguments "a" above, not to the reason as cited by the appellant including assigned representative. The appellant argues that examiner states "one having ordinary skill in the art..." only when examiner was addressing to support the arguments to disclose relevancies not to reject the claims in claim language. <u>Appellant continues to argue with respect to "particular silence frame", however, appellant claims, in general, directed to silence frames only</u>. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "particular silence frame") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

c.   Yao does not disclose or suggest determining whether one or more silence frames occur between successive media or non-silence frames as recited in dependent claims 33-36.

In response to appellant arguments c), examiner respectfully refers back appellant to the response to the argument "a" where examiner cited that Yao discloses "silence frame known as erasure frames are provided to a voice decoder in order to minimize the disruption in voice quality to a user." In order for Yao to provide latency reduction, Yao must have determine occurrence of at least one silence frame when providing such silence frame or erasure frames to voice decoder. Therefore, appellant arguments that Yao does not disclose or suggest determining one or more silence frame is not persuasive and, appears to be based on appellant own assertion, at least for the reason when Yao discloses providing such "silence frame, also known as erasure frames, to a voice encoder to minimize the disruption in voice quality."

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Saket K Daftuar/

Examiner, Art Unit 2151

/John Follansbee/

Supervisory Patent Examiner, Art Unit 2151

Conferees:

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